

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
(CORPUS CHRISTI DIVISION)

BBC CHARTERING & LOGISTIC §
GmbH & CO. KG §
§
Plaintiff §
§
V. § CIVIL ACTION NO. 13-cv-00324
§
ADMIRALTY
§ Pursuant to Rule 9(h) of the
§ Federal Rules of Civil Procedure
§
UTI UNITED STATES, INC., a.k.a. §
and/or d/b/a UTI PROJECTS, MINING & §
ENERGY VERTICAL §
§
Defendant §
§
§

COMPLAINT FOR DECLARATORY JUDGMENT

The complainant, BBC Chartering & Logistic GmbH & Co. KG (“BBC”), files this *Complaint for Declaratory Judgment* and respectfully represents as follows:

I.

BBC requests that this Court declare the rights, liabilities, and other legal relationships under a contract for the carriage of goods by sea, and to determine rights arising under that contract.

II.

The defendant, UTI United States, Inc., a.k.a. and/or d.b.a. UTI Projects, Mining & Energy Vertical (“UTI”), is an entity that would be affected by this declaration.

III.

BBC is a foreign corporation organized and existing under the laws of a foreign nation, with its principal offices in Leer, Germany, and which was and is engaged in the business of

operating vessels for the carriage of goods by sea. Specific to this action, BBC is the charterer of the M/V BBC MAPLE LOTTA.

IV.

On information and belief, UTI is a foreign corporation organized and existing under the laws of the State of New York, with its principal place of business in Long Beach, California, and which is doing business within this district. Specifically, UTI is a party to the contract of affreightment evidenced by the bill of lading more fully described herein, under which goods were to be shipped from Corpus Christi, Texas, to Umm Qasr, Iraq.

V.

The BBC MAPLE LOTTA, an ocean going vessel engaged in the common carriage of goods by sea for hire, carried the cargo at the center of this dispute from Corpus Christi, Texas, to Umm Qasr, Iraq, with carriage beginning on or about December 7, 2012

VI.

This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and this Court has jurisdiction over this action under 28 U.S.C. § 1331, as this action arises under the laws of the United States, in particular, the Carriage of Goods by Sea Act (“COGSA”), 46 U.S.C.A. § 30701 *et. seq.*, which BBC asserts is applicable to this contract of carriage both under the terms of the applicable contract of carriage and by operation of law. This Court also has jurisdiction over this action under 28 U.S.C. § 1333, as this is a claim that arises under the Court’s admiralty and maritime jurisdiction.

VII.

On or about November 13, 2012, BBC entered into a booking note with UTI for a shipment of cargo to be carried from Corpus Christi, Texas, to Umm Qasr, Iraq. *See* Booking Note No. 12-592 dated November 13, 2012, attached hereto as Exhibit A (the “Booking Note”).

VIII.

The cargo, ultimately consisting of thirty-four (34) packages, was loaded aboard the BBC MAPLE LOTTA in Corpus Christi, Texas, on or about December 5, 2012, through December 7, 2012. At that time, BBC issued a Bill of Lading for the cargo. *See* Bill of Lading No. CORUMM01, attached hereto as Exhibit B (the “Bill of Lading”).

IX.

During the voyage, the BBC MAPLE LOTTA encountered heavy weather and exceptionally large swells, which required the master to reduce the vessel’s speed and alter its course. This also caused the vessel to pitch and roll significantly. To the extent any cargo was damaged during the voyage and while in the custody of BBC, such damaged was exclusively the result of the vessel’s pitching and rolling.

X.

The Bill of Lading and the terms and conditions of both the Bill of Lading and as incorporated into the Booking Note provide as follows:

PARTICULARS DECLARED BY THE SHIPPER BUT NOT
ACKNOWLEDGED BY THE CARRIER

Number and kind of packages; description of cargo
SAID TO BE

32 Package (s) Goods . . . 32 Packages Consisting of 14 Skids; 14 PCS and 4
BLDS
1 x 40’ S.O.C. CNTR NO. CLHU430216-6 . . .

1 x 40' S.O.C. CNTR NO. TTNU567861-B . . .

* * *

Special Clauses

B. U.S. Trade Period of Responsibility

(i) In case the contract evidenced by this bill of lading is subject to the U.S. Carriage of Goods by Sea Act of the United States of America 1936 (U.S. COSGA), then the provisions stated in said act shall govern before loading, and after discharge and throughout the entire time the cargo is in the carrier's custody and in which event freight shall be payable on the cargo coming into the Carrier's custody. For U.S. trades, the terms on file with the U.S. Federal Maritime Commission shall apply to such shipments. In the event that U.S. COGSA applies, then the Carrier may, at the Carrier's election, commence suit in a court of proper jurisdiction in the United States in which case this court shall have exclusive jurisdiction.

(ii) If the U.S. COGSA applies, and unless the nature and value of the cargo has been declared by the shipper before the cargo has been handed over to the carrier and inserted in this Bill of Lading, the Carrier shall in no event be or become liable for any loss or damage to the cargo in any amount exceeding USD500 per package or customary freight unit. If, despite the provisions of 3(a), the Carrier is found to be liable for deck cargo, then all limitations and defenses available under US COGSA (or other applicable regime) shall apply and suit may be brought by the Carrier at the Carrier's election in the U.S. District Court of proper jurisdiction.

See Exhibit B.

XI.

Although BBC provided UTI with a fair opportunity to declare a value of the cargo on the face of both the Booking Note and the Bill of Lading, UTI did not declare a value for the cargo on either document. *See Exhibits A and B.*

XII.

The defendant has wrongfully alleged liability on the part of BBC for damage to an unspecified “15 packages including to the control rooms, transformers and the main gas chromatograph.” *See* Claim Correspondence, attached hereto as Exhibit C. Accordingly, BBC and the defendant are entities interested under the contract for carriage within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201(a).

XIII.

As an ocean carrier under COGSA, 46 U.S.C. § 30701, *et seq.*, BBC is not liable for loss to cargo resulting from excepted causes. Here, any damage to the cargo shipped pursuant to the Bill of Lading was exclusively caused by one or more excepted causes, including, but not limited to, an error in navigation and/or management of the BBC MAPLE LOTTA, peril(s) of the sea, and/or an act of God. BBC is therefore not liable for any loss or damage to the cargo.

XIV.

Any and all alleged liability on the part of BBC is specifically denied. Even assuming, however, that BBC is responsible for any damage and/or loss of the cargo, such damage / loss is subject to the U.S. COGSA’s limitations, including, but not limited to, the \$500.00 per package limitation.

WHEREFORE, the complainant, BBC Chartering & Logistic GmbH & Co. KG, prays that the defendant, UTI United States, Inc., a.k.a. and/or d.b.a. UTI Projects, Mining & Energy Vertical, be cited and served, and that after all legal delays and proceedings, this Court declare that:

The exceptions provided for by COGSA are a complete liability shield preventing any recovery by the defendant from BBC for the alleged damage and/or loss to the cargo.

In the alternative, the limitation of liability provisions in COGSA apply to the contract of carriage, thus limiting any potential recovery of the defendant from BBC to \$500.00 per package for the alleged damage and/or loss to the cargo.

In the further alternative, that BBC is entitled to the benefits of the Limitation of Liability Act, 46 U.S.C. § 30501, *et seq.*, as the alleged damage and/or loss to the cargo, if any, occurred without BBC's privity or knowledge.

BBC further prays for all general and equitable relief to which it may be entitled.

Respectfully submitted,

/s/ Jason P. Waguespack

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